

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1245 w/CS Credit Counseling Services
SPONSOR(S): Hasner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	20 Y, 0 N w/CS	Sheheane	Billmeier
2) Judiciary	15 Y, 0 N w/CS	Havlicak	Havlicak
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people with managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Many credit counseling services offer assistance through "debt management plans" (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, providing a manageable plan for clients.

This bill allows a maximum of \$50 for an initial set up or consultation fee for a debt management plan and \$120 per year for additional consultations. Additionally, the bill establishes a services fee cap of the greater of 7.5% of the monthly payment made by a debtor to the debt manager for disbursement to creditors or \$35 per month. The bill requires any debt manager or credit counselor to have a certified public accountant audit the accounts in which funds of debtors are deposited on an annual basis. The bill requires a debt manager or credit counselor to maintain a fidelity bond in the amount of \$100,000, or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with the debt manager by debtors, whichever is greater, but not to exceed \$500,000. The bill requires that a debt manager or credit counselor disburse funds of the debtor to the proper creditor not more than 30 days after receiving such funds.

The bill provides exceptions for certain persons who may engage in debt management and credit counseling services provided in the practice of law or any person or entity who engages in debt adjustment to adjust the indebtedness owed to such person or entity. Additionally the following organizations or their subsidiaries are exempt from the bill's provisions: Federal National Mortgage Association; Federal Home Loan Mortgage Corporation; Florida Housing Finance Corporation; banks; bank holding companies; trust companies; savings and loan associations; credit unions; credit card banks; or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.

There will be an indeterminate economic impact as a result of this bill. Please see "Fiscal Analysis and Economic Impact Statement."

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1245c.ju.doc
DATE: March 31, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

To the extent this bill creates new regulations on individuals or entities that provide credit counseling services and debt management services, state government is not reduced.

To the extent this bill decreases the options currently available to credit counselors and debt managers and prohibits currently lawful activity, individual freedom is not expanded.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through “Debt Management Plans” (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, providing a manageable plan for clients.

Currently, there are no laws in Florida directly regulating credit counseling organizations.¹ There is growing concern across the nation as new organizations obtain non-profit status from the IRS and use this status to gain the confidence of consumers. Many times, these organizations will charge upfront fees or “voluntary contributions” for their services.

According to a representative with the Florida Attorney General’s Office, there are currently two investigations into questionable credit counseling practices in Florida. On November 19, 2003, the Federal Trade Commission (FTC) filed suit against Ameridebt for engaging in deceptive practices

¹ See Marta Lugones Moakley, *Credit Repair Organizations After Regulation: Wolves in Nonprofits’ Clothing?*, THE FLORIDA BAR JOURNAL, July/August 2003, at p. 28 (wherein the author contends that federal laws such as: the Federal Credit Repair Organizations Act (15 U.S.C. § 1601 *et seq.*); the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*); the Consumer Credit Protection Act; Truth in Lending Act; the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. § 6101 *et seq.*); the Federal Racketeer Influenced Corrupt Organizations (RICO) Act (18 U.S.C. § 1961 *et seq.*); and state laws such as: the Florida Credit Services Organizations Act (ch. 817, part III, F.S.); the Florida Deceptive and Unfair Trade Practices Act (s. 501.201, F.S., *et seq.*); the Florida Free Gift Advertising Law (s. 817.415, F.S.); Consumer Collection Practices Act (ch. 559, part VI, F.S.); and the Florida RICO Act (s. 895.05, F.S.) provide an adequate regulation of credit repair organizations.

prompting the FTC to reissue two consumer alerts on credit counseling. Georgia's "Fairness in Credit Counseling Act" became law in July 2003,² implementing consumer protections against debt management services. With increasing concern over the lack of regulation of these credit counseling services, more states may propose legislation for the regulation of credit counseling services.

Proposed Changes

This bill creates Part IV of chapter 817, F.S., and places new requirements on credit counseling services and debt management services.

Section 817.801, F.S. The bill creates a definitional section in s. 817.801, F.S. which defines "Credit counseling services" as confidential money management, debt reduction, and financial educational services. "Debt management services" are defined as services provided to a debtor by a credit counseling organization for a fee to: 1) effect the adjustment, compromise, or discharge of any unsecured account, note or other indebtedness of the debtor or 2) receive from the debtor and disburse to a creditor any money or other thing of value.

Section 817.802, F.S. is created to address unlawful fees and costs charged by debt managers and credit counselors. Under current law, there is no limit on fees charged by credit counseling services and debt managers. The bill provides a maximum of \$50 for an initial set up or consultation fee for a debt management plan and \$120 per year for additional consultations. The bill also establishes a services fee cap of the greater of 7.5% of the monthly payment made by a debtor to the debt manager for disbursement to creditors or \$35 per month.

Section 817.803, F.S. Exceptions are created to the bill's provisions in s. 817.803, F.S. Specifically, the new provisions would not apply to Florida attorneys who may engage in debt management as part of their practice of law, any person or entity who engages in debt adjustment to adjust the indebtedness owed to such person or entity. Additionally the following organizations or their subsidiaries are exempt from the bill's provisions: Federal National Mortgage Association; Federal Home Loan Mortgage Corporation; Florida Housing Finance Corporation; banks; bank holding companies; trust companies; savings and loan associations; credit unions; credit card banks; or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services

Section 817.804, F.S. The bill creates s. 817.804, F.S., which establishes certain disclosure and financial reporting requirements. Debt managers and credit counselors for debtors must receive an annual audit from a certified public accountant on all accounts in which funds of debtors are deposited and payments made by the manager or counselor on behalf of the debtor. Debt managers and Credit counselors must also maintain a fidelity bond in the amount of \$100,000, or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with the debt manager by debtors, whichever is greater, but not to exceed \$500,000. Copies of the annual audits and insurance policies must be available for public inspection and copies provided upon written request at the expense of the requestor.

Section 817.805, F.S., pertains to the disbursement of funds debt managers and credit counselors received from debtors to pay the debtor's creditors. The bill requires debt managers and credit counselors to maintain a separate trust account for receipt of any funds received from each debtor and the disbursement of such funds on behalf of the debtor. Such funds received from the debtor must be disbursed by the debt manager or credit counselor to the proper creditor within 30 days.

² See GA. CODE ANN. § 18-5-1 *et seq.* (2003).

The bill provides that violations of Part IV, ch. 817, F.S., are considered an unfair or deceptive trade practice as defined in the Florida Deceptive and Unfair Trade Practices Act (FDUTPA);³ moreover, any debt manager and credit counselor would be subject to the penalties and remedies under FDUTPA. The bill also provides that any consumer injured by a violation of these provisions may bring an action for the recovery of damages and in no case will judgment be less than the amount paid by the buyer to the credit counseling organization, including reasonable attorney's fees and costs.

Finally, the bill provides that any person convicted of violating any provisions of s. 817.805, F.S., is guilty of a felony of the third degree as provided in ss. 775.082, 775.083, and 775.084, F.S.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 creates Part IV of chapter 817, F.S., relating to credit counseling services, and comprised of sections 817.801, 817.802, 817.803, 817.804, and 817.805, F.S.

- Section 817.801, F.S., providing definitions.
- Section 817.802, F.S., relating to unlawful fees and costs.
- Section 817.803, F.S., relating to exceptions.
- Section 817.804, F.S., relating to requirements; disclosure and financial reporting.
- Section 817.805, F.S., relating to disbursements of funds.

Section 2 providing an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill contains provisions which require enforcement by the Attorney General. The cost is indeterminate because the number of cases that may arise is not known.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³ See Part II of chapter 501, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Office of Financial Regulation, the financial impact on the private sector is difficult to project. All firms engaged in credit counseling will have to obtain and maintain insurance coverage. The cost of such coverage will largely be driven by the financial condition of the company. There will also be an annual premium to renew such coverage.

Further, credit counseling firms will have to have an annual audit prepared by a certified public accountant. The cost associated with the audit will vary based on a number of factors, including the size of the business involved, location, etc.

The bill may represent a substantial increase in recordkeeping for some firms. The cost of such recordkeeping is impossible to project. Maximum fees are established by the bill, which may reduce revenues to certain firms.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The "or" on line 45 of the committee substitute should be an "and" to clarify the maximum fees that can be charged for the initial consultation and yearly for additional consultations.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Commerce Committee adopted a strike all amendment and one amendment to the strike all amendment. The strike all amendment revises the bill to include the Florida Housing Finance Corporation within the group of entities that are exempt from certain provisions relating to credit counseling and debt management services. The strike all amendment also removed language requiring the Office of Financial Regulation to be a repository for financial audits of credit counseling agencies and removed a section pertaining to civil penalties. The strike all amendment provides that violations of the provisions contained in the bill are considered an unfair or deceptive trade practice as defined in Part II of chapter 501, F.S. The amendment provides that any consumer injured by a violation of these provisions may bring action for the recovery of damages and in no case will judgment be less than the amount paid by the buyer to the credit counseling organization. The amendment provides that any person convicted of violating provisions of the bill

will be guilty of a felony of the third degree as provided in s. 775.082, F.S., s. 775.083, F.S., and s. 775.084, F.S.

The amendment to the strike all amendment provided language to clarify that the bill would not preclude a credit counseling agency from waiving fees if the credit counseling agency deemed it necessary.

The bill was further amended in the House Judiciary Committee on March 30, 2004. The amendment adopted at that meeting conformed the bill to its senate companion which included the following changes:

- Clarified that permissible fees charged by those offering credit counseling services are no more than \$50 for an initial consultation fee in addition to \$120 per year for subsequent consultation.
- Increased from \$25 to \$35 per month for the amount debt managers may charge debtors for their services as defined in the bill.
- Provides a cap of \$500,000 on the amount of fidelity bond required by the bill.

This analysis is drafting to bill as amended.